

# SUPREME COURT OF WISCONSIN

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CASE No.: 02-1249

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COMPLETE TITLE:

St. Paul Fire & Marine Insurance Company,  
Plaintiff-Third-Party Defendant-  
Respondent,  
v.  
Curtis J. Keltgen,  
Defendant-Third-Party Plaintiff-  
Appellant-Cross-Respondent-Petitioner,  
Paulet Keltgen,  
Intervenor-Third-Party Plaintiff,  
v.  
Giles Smith,  
Third-Party Defendant,  
L.E. Phillips Career Development Center,  
Inc.,  
Third-Party Defendant-  
Respondent-Cross-Respondent,  
Venture Insurance Company and Wausau Insurance  
Company,  
Third-Party Defendants-  
Respondents-Cross-Appellants.

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REVIEW OF A DECISION OF THE COURT OF APPEALS

2003 WI App 53

Reported at: 260 Wis. 2d 523, 659 N.W.2d 906  
(Ct. App. 2003- Published)

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OPINION FILED: April 2, 2004

SUBMITTED ON BRIEFS:

ORAL ARGUMENT: February 12, 2004

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SOURCE OF APPEAL:

COURT: Circuit  
COUNTY: Eau Claire  
JUDGE: Thomas H. Barland

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JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING: SYKES, J., did not participate.

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ATTORNEYS:

For St. Paul Fire & Marine Insurance Company and L.E. Phillips Career Development Center there was a brief by *John P. Richie* and *Richie, Wickstrom & Wachs, LLP*, Eau Claire, and

*Gregory Deckert and Vest & Deckert, P.A., Brooklyn Center, MN, and oral argument by John P. Richie.*

For Curtis J. Keltgen there were briefs by *Phillip P. Todryk* and *Todryk Law Office, S.C., Hudson*, and oral argument by *Phillip P. Todryk*.

For Wausau Insurance Company there was a brief by *Robert J. Dreps, James D. Peterson and La Follette Godfrey & Kahn, Madison*, and oral argument by *James D. Peterson*.

An amicus curiae brief was filed by *William C. Gleisner, III* and *Law Offices of William Gleisner, Milwaukee*; *Rhonda L. Lanford* and *Habush, Habush & Rottier, S.C., Madison*, on behalf of the Wisconsin Academy of Trial Lawyers.

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 02-1249  
(L.C. No. 97 CV 457)

STATE OF WISCONSIN

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IN SUPREME COURT

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St. Paul Fire & Marine Insurance Company,  
  
Plaintiff-Third-Party Defendant-  
Respondent,

v.

Curtis J. Keltgen,  
  
Defendant-Third-Party Plaintiff-  
Appellant-Cross-Respondent-  
Petitioner,

Paulet Keltgen,  
  
Intervenor-Third-  
Party Plaintiff,

v.

Giles Smith,  
  
Third-Party Defendant,  
  
L.E. Phillips Career Development Center,  
Inc.,

Third-Party Defendant-  
Respondent-Cross-Respondent,

Venture Insurance Company and Wausau  
Insurance Company,

Third-Party Defendants-  
Respondents-Cross-Appellants.

**FILED**

**APR 2, 2004**

Cornelia G. Clark  
Clerk of Supreme Court

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REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. This is a review of a published decision of the court of appeals, St. Paul Fire & Marine Ins. Co. v. Keltgen, 2003 WI App 53, 260 Wis. 2d 523, 659 N.W.2d 906, that affirmed a judgment of the Circuit Court for Eau Claire County, Thomas H. Barland, Judge. The court is equally divided on the question of whether the decision of the court of appeals should be affirmed or reversed. Justice Jon P. Wilcox, Justice N. Patrick Crooks, and Justice David T. Prosser would affirm; Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, and Justice Patience D. Roggensack would reverse. Justice Diane S. Sykes did not participate.

¶2 Accordingly, the decision of the court of appeals is affirmed.

